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September 4, 2018

The Honorable Edmund G. Brown, Jr.
Governor, State of California
State Capitol
Sacramento, CA 95814

RE: SB 1437 (Skinner) – Veto Request

Dear Governor Brown:

On behalf of the California District Attorneys Association (CDA A) and the District Attorneys of Alameda, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Los Angeles, Marin, Merced, Monterey, Nevada, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Luis Obispo, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tuolumne, Tulare, Ventura, Yolo, and Yuba counties, we write to respectfully request your veto of Senate Bill 1437, by Senator Skinner. While this bill is well-intentioned, as it is written, it is deeply flawed and poses a significant risk to the safety of our communities.

Senate Bill 1437 eliminates murder liability for those who participate in felonies that are inherently dangerous to human life in which a death occurs if those participants do not personally commit the homicidal act, do not act with premeditated intent to aid and abet an act in which a death would occur, or for those who do not act as a major participant in the underlying felony and act with reckless indifference to human life.

SB 1437 presents significant problems in the way in which it was passed, subjecting it to legal, procedural, and constitutional challenges. The voters enacted Proposition 7, the Death Penalty Act of 1978, in the November general election of that year. Proposition 7 increased the penalty for felony murder and accomplice liability for felony murder as it was defined in Penal Code section 189.

The California Constitution authorizes the Legislature to amend or repeal an initiative statute only by a statute that becomes effective when approved by the electors, unless the initiative statute permits amendment or repeal without their approval (see Cal. Const., Art. II, Sec. 10, Subd. (c)). Proposition 7 does not permit amendment by the Legislature and any amendment, such as SB 1437, needs to be submitted to the voters to become effective.

Since SB 1437 reduces the number of people who could be convicted of murder, and instead only holds them liable for the underlying offense, it amends Proposition 7 because it changes the scope and definition of murder that voters relied upon when enacting the initiative in 1978. As such, SB 1437 requires the approval of the electors to become effective.

Attached to this correspondence is a letter dated June 6, 2018, from the Office of Legislative Counsel, the non-partisan public agency that drafts legislative proposals and prepares legal opinions to the Legislature. The Legislative Counsel's analysis of SB 1437 concurs that this bill represents an amendment to Proposition 7, requiring the assent of the voters to become effective.

Finally, CDAA and District Attorneys from across California have been and remain committed to adopting measured reform in this area. However, the complete elimination of murder liability for participants in dangerous felonies goes too far and draws no distinction between those who participate in dangerous felonies that result in the death of someone and those that do not. To treat these crimes as equal cheapens the lives of those lost to senseless violence and leaves forsaken those for whom criminal justice system is designed to protect.

We have worked tirelessly and spent countless hours developing sensible changes to this area of the law. We have proposed changes that temper accountability with compassion yet hold all participants to the crime answerable in some way for the victim's death while ensuring that punishment is commensurate with actual conduct. It is in this respect that SB 1437 falls short.

This bill also broadly authorizes anyone convicted of murder to seek relief through its retroactive resentencing provisions with the filing of a simple request. Once relief is sought, the burden rests on the People to prove beyond a reasonable doubt a petitioner's ineligibility to have their murder conviction set aside and to be resentenced only to underlying crimes that were likely never charged in the original case because of the state of the law in this area at the time.

Because SB 1437 retroactively applies to convictions that are resolved by a negotiated plea bargain, in addition to convictions that resulted from jury and bench trials, the absence of a full court record, including transcripts and exhibits, will prevent the People from establishing beyond a reasonable doubt whether a petitioner is excluded. The result will entitle virtually all petitioners who apply, even those who were actual killers, those who acted with an intent to kill, or those who were major participants in the crime that resulted in death, to a resentencing.

Moreover, this bill provides no exception to allow for the trial transcript to be used in a resentencing hearing. The effect of this would be to necessitate the calling of witnesses, other victims, and family members who may have been involved in the original case. The effects of this to crime victims and survivors would be devastating and financially burdensome as it would require what would essentially be a new mini-trial.

Quite simply, SB 1437 will allow everyone convicted of murder—actual killers, those acting with premeditated intent, and major participants acting with reckless indifference to human life included—to petition to have their convictions vacated. Many, including those most undeserving of relief and dangerous to our community, will be successful simply by virtue of the inartfully crafted procedures.


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Effective and meaningful changes to the law of felony murder could be attained in a more collaborative and less costly and litigious manner. We are committed to working to find a reasonable and measured approach to felony murder reform. Unfortunately, this bill falls short and creates some potentially disastrous and costly problems that render this bill unworkable.


For these reasons, we respectfully request that you veto Senate Bill 1437. Thank you for your consideration of this request. If you would like to discuss these issues further, please contact us.


Very truly yours,

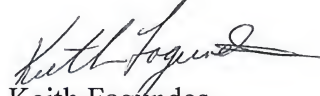

Birgit Fladager, CDAA President
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Shasta County District Attorney


Krishna Abrams
Solano County District Attorney



Dan Dow
San Luis Obispo County District Attorney

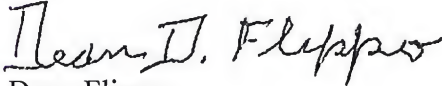

Lawrence Allen
Sierra County District Attorney

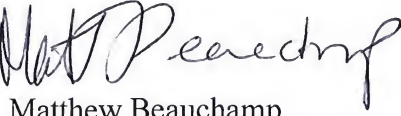

Keith Fagundes
Kings County District Attorney

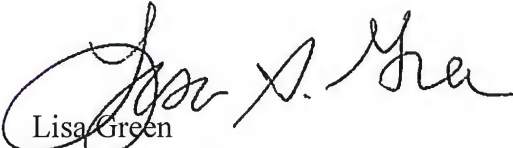

Don Anderson
Lake County District Attorney



Maggie Fleming
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J. Kirk Andrus
Siskiyou County District Attorney


Dean Flippo
Monterey County District Attorney


Matthew Beauchamp
Colusa County District Attorney

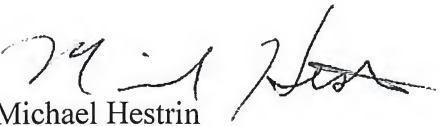

Lisa Green
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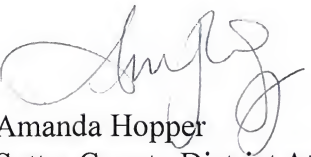

Edward Berberian
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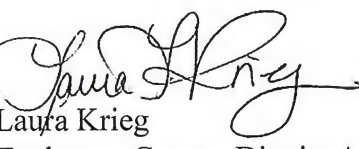

Thomas L. Hardy
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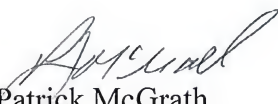
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Michael Hestrin
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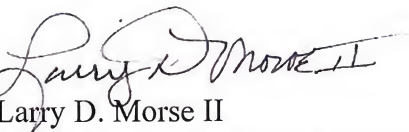

Amanda Hopper
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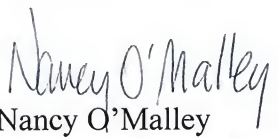

Laura Krieg
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Patrick McGrath
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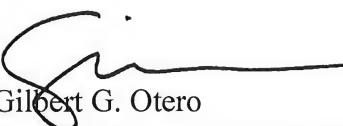

Stacey Montgomery
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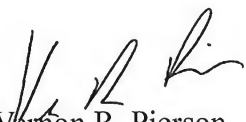

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Alameda County District Attorney



Clifford Newell
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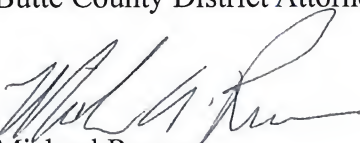

Gilbert G. Otero
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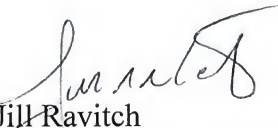

R. Scott Owens
Placer County District Attorney

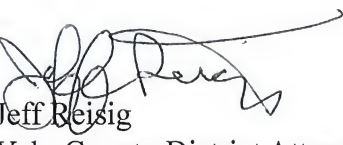

Vernon R. Pierson
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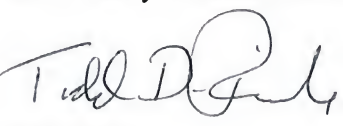

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Orange County District Attorney


Michael L. Ramsey
Butte County District Attorney


Michael Ramos
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Jill Ravitch
Sonoma County District Attorney


Jeff Reisig
Yolo County District Attorney


Todd Riebe
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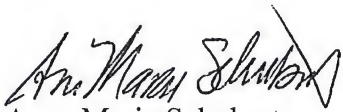
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Jeff Rosell
Santa Cruz County District Attorney



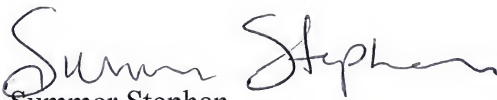
Jeff Rosen
Santa Clara County District Attorney



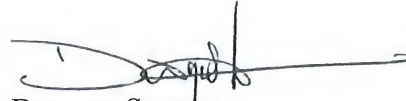
Anne Marie Schubert
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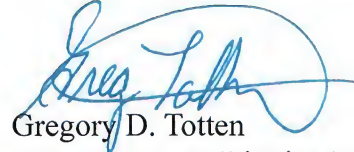
Lisa Smittcamp
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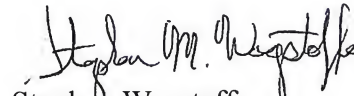
Summer Stephan
San Diego County District Attorney



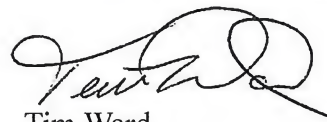
Dwayne Stewart
Glenn County District Attorney



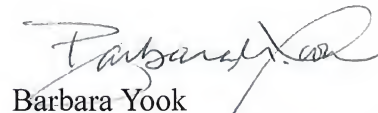
Gregory D. Totten
Ventura County District Attorney



Stephen Wagstaffe
San Mateo County District Attorney



Tim Ward
Tulare County District Attorney



Barbara Yook
Calaveras County District Attorney

cc: Dan Seeman, Deputy Legislative Secretary, Office of the Governor
Senator Nancy Skinner